



Appeal Decision

Site visit made on 6 October 2020

by C Beeby BA (Hons) MIPROW

an Inspector appointed by the Secretary of State

Decision date: 11th November 2020

Appeal Ref: APP/K2420/W/20/3251812

39 Station Road, Desford LE9 9FN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Warren on behalf of Invicta Universal Ltd against the decision of Hinckley & Bosworth Borough Council.
 - The application Ref 19/01411/FUL, dated 16 December 2019, was refused by notice dated 25 March 2020.
 - The development proposed is the conversion, alteration, extension and partial demolition of an existing house to enable conversion to 5 apartments; construction of 4 new dwellinghouses; alteration to the access and associated landscaping and facilities.
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Decision

1. The appeal is allowed and planning permission is granted for the conversion, alteration, extension and partial demolition of an existing house to enable conversion to 5 apartments; construction of 4 new dwellinghouses; alteration to the access and associated landscaping and facilities at 39 Station Road, Desford LE9 9FN, in accordance with the terms of the application, Ref 19/01411/FUL dated 16 December 2019, subject to the conditions set out in the Schedule of Conditions at the end of this decision.

Application for costs

2. An application for costs was made by Mr G and Mr S Warren on behalf of Invicta Universal Ltd against Hinckley and Bosworth Borough Council. This application is the subject of a separate Decision.

Preliminary Matter

3. The description of development in the heading above has been taken from the planning application form. However, in Part E of the appeal form it is stated that the description of development has not changed but, nevertheless, a different wording has been entered. Neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the original application.

Main Issues

4. The main issues are:
 - Whether the proposed development would provide acceptable living conditions for future occupants of the three terraced dwellings, with regard to sunlight, daylight and the provision of garden space; and

- The effect of the proposed development on the character and appearance of the area.

Reasons

Living conditions

5. The appeal site holds a large dwelling set within a generous garden. The appeal scheme proposes its conversion to apartments and the construction of four two bedroomed dwellings within the garden land. One of these would lie adjacent to the existing dwelling and the remaining three would form a terrace which would lie across an area of parking.
6. The terrace would lie towards a corner of the site, which contains a group of mature trees and some hedgerow. Rear gardens to the terraced dwellings would extend towards the trees, a number of which have a significant height. The trees and other vegetation would be likely to cast shade on the gardens and rear rooms of the dwellings at some times of the year and day due to their position south of the dwellings, their proximity, their height and their density.
7. Nevertheless, the submitted arboricultural survey and impact assessment recommends the removal of a number of tree and hedgerow specimens within the group due to their relatively limited potential for long-term retention. The majority of these have a substantial height and as a dense evergreen tree the Leyland cypress would cast year-round shade. The removal of these trees would increase the levels of sunlight and daylight available to the dwellings and gardens.
8. Furthermore, the majority of the tall trees within the group are deciduous specimens. As a result, they would cast dappled shade during the summer months, and light to the dwellings and gardens would increase during the winter months due to leaf loss. As relatively modest two bedroomed dwellings, the terraces are likely to carry greater appeal to people for whom exposure to strong sunlight may cause increased concern, for example those with young children. An element of dappled shading to gardens and rear rooms may consequently be welcomed by such groups, particularly as the gardens are south facing and hence would otherwise be exposed to significant levels of sunlight during the summer months.
9. Turning to the provision of garden space, the Council's Good Design Guide Supplementary Planning Document (2020) (the SPD) provides a general guideline for garden sizes of 60 metres squared for a two bedroomed house, with a minimum garden length of 7 metres. The guidance notes that these proportions could vary depending on design.
10. The appellant has provided an annotated plan which suggests that the smallest of the garden areas at the proposed two bedroomed dwellings is 65.5 metres squared, formed by two triangular areas of land which adjoin the rear and side elevations of the westernmost dwelling of the terrace. There is minimal evidence that the presence of trees within some of the gardens would unacceptably restrict their use. Thus, I have no evidential basis on which to determine that the rear garden provision would fail to accord with the SPD guidance in terms of area.
11. Moreover, I am mindful, with regard to all living conditions considerations, that the scheme includes the provision of a communal amenity area which would

occupy a significant proportion of the development. This currently includes open lawned areas where sunlight and daylight would be unrestricted, a tennis court, and an orchard, which would offer a more private area. Whilst the gardens at both end properties of the terrace would have a relatively modest scale, the availability of the communal amenity area in close proximity would acceptably mitigate any harm to living conditions which would arise from the provision of garden space. I have attached a condition to safeguard the future use of the communal area as amenity land as a result of the significant weight which I attach to its ability to enhance the living conditions of occupiers of the development.

12. The shading of the terraced dwellings' rear rooms and gardens by trees would consequently be mitigated by the factors I have identified in paragraphs 7, 8 and 11 above, so that it would cause limited harm to the living conditions of the occupiers of the garden and rear rooms of the dwellings with regard to sunlight and daylight. The development would, however, provide acceptable conditions with regard to the provision of garden space.
13. The scheme would consequently cause limited harm to the living conditions of future occupants of the three terraced dwellings with regard to sunlight and daylight. Thus, the proposal conflicts with Policy DM10 of the Site Allocations and Development Management Policies Development Plan Document (SADMP), which seeks to safeguard the living conditions of occupiers of the proposed development. However, the scheme is acceptable in terms of the provision of garden space and therefore it complies with the SPD in this regard.

Character and appearance

14. The appeal site lies towards the edge of the settlement. The pattern of development in the vicinity consists of a combination of detached dwellings within generous grounds and residential estates of a higher density. Furthermore, a new residential estate¹ of approximately 80 dwellings is under construction off the nearby Leicester Lane.
15. Some of the dwellings on Barns Way face the highway, however there are also examples of facing side elevations. The Leicester Lane development will continue this pattern, according to the plans. As a result, road facing dwellings are not a strong characteristic of the area. Furthermore, the existing dwelling within the site lies side on to the highway, and the terrace would reflect this established appearance. Therefore the proposal would not cause unacceptable harm to the character and appearance of the area as a result of the position of dwellings within the site.
16. The scheme includes the construction of a detached two bedroomed dwelling adjacent to the existing building. This would occupy an area of former side garden land, and would have the same design as the terraced dwellings. Whilst its design would differ from the existing building, a subservience would arise from its lower ridge level and smaller scale, and the existing building line would be maintained. These factors would contribute positively to the relationship of the two buildings. Furthermore, the use of rendered external walls to match the existing building and a window similarly set into the roof are design features which would provide continuity in the development's appearance. Moreover, a walkway between the two buildings and the

¹ Local Planning Authority References: 19/00149/OUT and 19/01416/REM

- separation provided by the side garden would allow for spacing around the detached dwelling which would reflect the space around the existing building.
17. The types of roof forms and fenestration in the vicinity are sufficiently diverse that I am satisfied that no undue harm to the area's appearance would arise from these matters with regard to the one and a half storey dwellings.
 18. The main public views of the central parking forecourt would be possible along the site's drive. Whilst the parking would accommodate a number of vehicles, these would be screened from extensive public views by intervening development, the entrance gate, boundary treatments and the significant level of vegetation which would lie within the site. Furthermore, the parking area would include soft landscaping to all sides, and elements of this between spaces. These factors would acceptably reduce the urbanising impact of the two rows of vehicles. Accordingly, the parking arrangements would not dominate the street scene.
 19. Similarly, garden fences would be screened by their set back from the road and beyond boundary vegetation and furthermore would be likely to have a modest scale, so that their effect on the area's appearance would be acceptable.
 20. The group of trees within the southern corner of the site makes a positive contribution to the leafy character and appearance of the area. I have found above that there are factors which would mitigate any harm to living conditions caused by the trees with regard to sunlight and daylight, so that it would be limited in extent. Furthermore, the submitted arboricultural survey states that the retained trees within the group are generally in reasonable condition, and does not identify any significant defects which may give rise to safety concerns about them. Thus, there is a low risk of potential harm to the character and appearance of the area as a result of alterations to or removals of trees due to pressure from occupiers.
 21. Moreover, the Council confirmed a Tree Preservation Order² in June, in respect of a single tree and the corner group within the site. This statutory protection and the conditions I have imposed concerning tree protection provide adequate assurance that the construction process and subsequent presence of the development would not cause unacceptable harm to the corner group.
 22. Accordingly, the proposed development would have an acceptable effect on the character and appearance of the area. Thus, the scheme complies with the character and appearance aims of Policy DM10 of the SADMP. Further compliance exists with the overall aims of the SPD with regard to parking.

Other Matters

23. Concern is raised by a number of interested parties regarding the effect of the terraced housing on outlook and privacy from dwellings at the adjacent Goulton Crescent. However, the dwellings concerned are set back from the boundary fencing, and side garden land at the terrace would provide additional separation from the buildings and gardens concerned. This distance would prevent any unacceptable effect on outlook. Furthermore, the terrace's facing side elevation would not contain any wall openings and therefore this would not give rise to direct overlooking. Any views from first floor rear windows at the

² The Borough Council of Hinckley & Bosworth (Manor Cottage, 39 Station Road, Desford, Leicester) (No.2) Tree Preservation Order 2020

terrace would be at an oblique angle which would be unlikely to result in any unacceptable harm to privacy.

24. Concern is additionally raised regarding the potential for the removal of trees to cause harm due to an increase in exposure to road noise at properties on Goulton Crescent. Whilst some of the trees within the southern corner group would be removed, the majority would be retained. Furthermore, there is minimal substantive evidence before me to suggest that traffic noise from surrounding roads is at such a level as to cause unacceptable harm to living conditions. Thus, the proposal's effect would be acceptable in this regard.
25. I acknowledge concerns regarding highway safety, biodiversity, flood risk and the demands on local infrastructure. However, there is minimal evidence before me concerning the proposal's effect on such matters. Furthermore, I consider that these matters can generally be adequately addressed by conditions. Accordingly, I do not consider that the proposal would cause unacceptable harm in these regards.

Conditions

26. I have imposed a condition specifying the relevant drawings as this provides certainty.
27. Conditions 3, 11 and 12 are imposed in order to protect the character and appearance of the area in accordance with Policy DM10 of the SADMP. Condition 3 is a pre-commencement condition in order to provide certainty prior to the commencement of development.
28. Conditions 4, 14, 15, 16, 17 and 18 are necessary in order to protect the safety of pedestrians and road users due to the site's location adjacent to a highway and in accordance with the highway safety provisions of the National Planning Policy Framework (2019) (the Framework) and the advice of the highway authority. Condition 4 is a pre-commencement condition in order to provide appropriate protection over the full course of development.
29. Condition 5 is necessary to ensure that bin storage at the site does not harm the character and appearance of the area and to clarify the refuse collection point from the highway, in accordance with Policy DM10 of the SADMP. The condition is a pre-commencement condition in order to provide certainty prior to the commencement of development.
30. Conditions 6, 8, 9, 10 and 20 are imposed in order to adequately protect the retained trees during and after construction so as to maintain their contribution to the character and appearance of the area and to biodiversity, in accordance with Policy DM6 of the SADMP and paragraph 170 of the Framework. The conditions are pre-commencement conditions where necessary in order to provide appropriate protection over the full course of development.
31. Condition 7 is imposed in order to protect the living conditions of the occupiers of the new dwellings. The condition is a pre-commencement condition in order to safeguard the living conditions of future residents by the protection of the communal amenity area.
32. Condition 13 is imposed in order to protect the living conditions of surrounding residents during the construction period. The condition is not discretionary

because of the potential for harm to the living conditions of residents if additional working hours were permitted.

33. Condition 19 is imposed in order to ensure the satisfactory storage and disposal of surface water from the site to prevent flooding and in accordance with Policy DM7 of the SADMP.

Planning Balance and Conclusion

34. The parties concur that the Council cannot demonstrate a five-year housing land supply (5YHLS). Paragraph 11dii) of the Framework provides, in such a case, that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
35. In terms of benefits, there would be some economic uplift during construction through short-term employment and the purchase of building materials. Future occupiers would also contribute to the local economy. Socially, the development would add to the supply of housing, in a location with reasonable access to services and facilities. This would be in accordance with the Government's objective of significantly boosting the supply of homes, especially in a context where there is no 5YHLS. Occupiers would additionally be likely to participate in the local community.
36. Against that, the proposal would cause limited harm to the living conditions of occupiers of the proposed development. As a result of the limited harm identified, the proposal conflicts with Policy DM10 of the SADMP. However, Policy DM10 is rendered out-of-date by the application of Paragraph 11d) of the Framework. I consequently attach limited weight to the proposal's conflict with this policy.
37. For these reasons the harm caused by the development would not significantly and demonstrably outweigh the benefits when assessed against policies in the Framework taken as a whole. Consequently, the proposal benefits from the presumption in favour of sustainable development.
38. Thus, I conclude that the appeal should be allowed.

C Beeby

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location 39 Station Road 19-66 (Revision C), Proposed Site Plan 19-66.2 (Revision F), Proposed Plans 39 Station Road 19-66.4 (Revision F), Existing and Proposed Elevations 19-66.5 (Revision F), Proposed Terrace Development 19-66.6 (Revision F), Proposed Single Dwelling Development and Bin Store 19-66.7 (Revision F).
- 3) No development shall take place until full details of the finished levels, above ordnance datum, of the ground floors of the proposed buildings, in relation to existing ground levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.
- 4) No development shall take place until a pedestrian safety improvement scheme including a two metre wide pedestrian footway and suitable crossing point over Station Road has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in full prior to the occupation of any part of the development.
- 5) No development shall take place until a scheme that makes provision for waste and recycling storage and collection across the site has been submitted to and approved in writing by the local planning authority. The details should address accessibility to storage facilities and adequate collection point space at the adopted highway boundary. The scheme shall be implemented in full.
- 6) No development shall commence until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include:
 - boundary treatments;
 - an implementation programme.

The landscaping works shall be carried out in accordance with the approved details before any part of the development is first occupied in accordance with the agreed implementation programme.

- 7) The details of the landscaping of the site required to be submitted shall include details of a scheme for the preservation or laying out as a communal amenity area of those parts of the application site which are unannotated according to the key on the submitted plan no. 19-66.2 (Revision F) and that land shall not thereafter be used for any purpose other than as a communal amenity area.
- 8) No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) shall have been submitted to and approved in writing by the local planning

- authority. The scheme for the protection of the retained trees shall be carried out as approved.
- 9) No retained tree or hedge shall be cut down, uprooted, destroyed, pruned, cut or damaged in any manner during the construction period, other than in accordance with the approved plans and the submitted Arboricultural Survey and Impact Assessment dated August 2019 and revised December 2019, without the prior written approval of the local planning authority.
 - 10) If any retained tree or hedge is cut down, uprooted or destroyed or dies another tree shall be planted at the same place and that tree shall be of such size and species and shall be planted, in accordance with condition 8, at such time as may be specified in writing by the local planning authority.
 - 11) No development above foundation level shall commence until samples of the types and colours of roof tiles to be used on the one and a half storey dwellings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved samples.
 - 12) The external surfaces of the alterations and extensions to the existing dwelling hereby permitted shall be constructed in the materials shown on the application for planning permission dated 16 December 2019.
 - 13) Demolition or construction works shall take place only between 07:30 and 18:00 on Mondays, Tuesdays, Wednesdays, Thursdays and Fridays, between 08:00 and 13:00 on Saturdays and shall not take place at any time on Sundays or on Bank or Public Holidays.
 - 14) The development hereby permitted shall not be occupied until the access arrangements shown on Visibility Assessment and Swept Path Analysis Drawing No.: F20011/01 Revision A dated 2 March 2020 have been implemented in full.
 - 15) The development hereby permitted shall not be occupied until vehicular visibility splays of 2.4 x 43 metres to the south and 2.4 x 44 metres to the north have been provided at the site access. These shall be permanently maintained thereafter with nothing within those splays higher than 0.6 metres above the level of the adjacent footway/verge/highway.
 - 16) The development hereby permitted shall not be occupied until parking and turning facilities have been implemented in accordance with the Proposed Site Plan Drawing No.: 19-66.2 Revision F. These shall be permanently maintained thereafter.
 - 17) The development hereby permitted shall not be occupied until the existing gates to the vehicular access have been permanently removed. Notwithstanding the provisions of Part 2 of Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no vehicular access gates, barriers, bollards, chains or other such obstructions shall be erected within a distance of 10 metres of the carriageway, nor shall any be erected within a distance of 10 metres of the highway boundary unless hung to open away from the highway.

- 18) The development hereby permitted shall not be occupied until such time as the access drive (and any turning space) has been surfaced with tarmacadam, or similar hard bound material (and not loose aggregate) for a distance of at least 10 metres behind the highway boundary. Once provided, they shall be so maintained in perpetuity.
- 19) No building hereby permitted shall be occupied until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
- provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - include a timetable for its implementation; and
 - provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 20) The soft landscaping scheme shall be maintained for a period of 5 years from the date of planting. During this period any trees or plants which die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.